

BEFORE THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO.2678 OF 1988.

Date of Decision:-13-12-1995.

For Approval and Signature

THE HON'BLE MR. JUSTICE N.N. MATHUR.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judges ?

Mr. Anjaria, for Mr. S.N. Shelat, Advocate, for the petitioner.

Mr. N.N. Pandya, A.G.P. for the respondents no.2 and

4. Mr. M.B. Faruki, Advocate, for the respondent no.3.

Respondent no.1 served but none appeared.

Coram:-N.N Mathur, J.

Date:--13-12-1995.

Oral Judgemnt:-

Viramgam Municipality vide resolution dated 8-12-1983 resolved granting lease for a period of 9 years in respect of 35 sq.mtrs. of land situated between the shops No.24 and 25 in Survey No.52, Tika No.10 in Viramgam Town. The Collector, Ahmedabad by the letter dated 4-4-1985 granted the permission sought for execution of the lease. It appears that the lease deed was executed in favour of the petitioner on 9-4-1985. It

also appears that respondent no.1 Somabhai Gandabhai Patel moved the Additional Chief Secretary (Appeals) challenging the order of the Collector, Ahmedabad and the Resolution of the respondent Viramgam Municipality. The Additional Chief Secretary(Appeals) by the order dated 12-5-1988 set aside the order of the Collector, Ahmedabad.

2. This Special Civil Application deserves to be allowed only on short question that the Collector granted the permission in exercise of power conferred under Section 25(2) of the Gujarat Municipalities Act, 1963 (hereinafter referred to as the Act). The State Government could have interfered in the said order only under the provisions of the Gujarat Municipalities Act, 1963. It is contended by Mr. Anjaria, learned Advocate appearing for the petitioner that the Additional Chief Secretary (Revenue) has no authority to act on behalf of the State Government in the matter covered by the Gujarat Municipalities Act, 1963. He has raised this contention making specific averment in para 6 of the petition. This contention has not been refuted by the State Government. In view of this fact, the order passed by the Additional Chief Secretary(Revenue) deserves to be quashed and set aside.

3. In view of the aforesaid, this Special Civil Application is allowed and the order passed by the Additional Chief Secretary (Appeals), Revenue Department dated 12-5-1988 is quashed and set aside. The order of the Collector and that of the Viramgam Municipality is restored. Rule is made absolute. There shall be no order as to costs also.

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